

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 2019-09
)	
)	
SHAWN TYSON & NATASHA FRANCE,)	
)	
Defendant.)	

ATTORNEYS:

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For Shawn Tyson,

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For Natasha France.

ORDER

GÓMEZ, J.

Before the Court are the motions to suppress filed by Shawn
Tyson and Natasha France.

I. FACTUAL AND PROCEDURAL HISTORY

On January 28, 2019, the United States filed a six-count information against Shawn Tyson ("Tyson") and Natasha France ("France"). Count One charged Tyson with being a felon in possession of ammunition in violation of 18 U.S.C. § 922(g)(1). Counts Two and Three charged France with willful transfer, sale or transport of weapons to another unlicensed, out-of-state person in violation of 18 U.S.C. §§ 922(a)(5) and 924(a)(1)(D). Counts Four, Five, and Six charged both Tyson and France with mailing nonmailable firearms in violation of 18 U.S.C. § 1715. On March 7, 2019, the Grand Jury returned a nine-count indictment. In addition to the charges outlined above, the indictment charges Tyson and France with three counts of delivery of firearms to a common carrier for shipment without written notice in violation of 18 U.S.C. § 922(e). On June 6, 2019, the Grand Jury returned a 10-count superseding indictment. The superseding indictment added a charge against Tyson of possessing a machine gun in violation of 18 U.S.C. § 922(o).

On March 12, 2019, Tyson and France filed motions to suppress. Both Tyson and France seek to suppress physical evidence uncovered from the warrantless searches of several packages on November 14, 2018. On April 23, 2019, the Court held a hearing on the motions to suppress. The evidence submitted by

the parties and adduced at the hearing established the following:

On October 23, 2018, Jerry Quetel ("Quetel"), an officer with Customs and Border Protection ("CBP"), was inspecting international mail coming into St. Thomas, U.S. Virgin Islands when he came across a package addressed to Shawn Tyson ("Tyson"). The package, which originated in Israel, bore a shipping label that read: "Roni kit plastic." ECF No. 69 at 14:7. Quetel knew that a Roni kit was a "gun accessory" for a "small handgun" that gave the firearm "the look and the handle, the feel of an assault weapon." See *id.* at 15:22-23, 16:1-2. Quetel subsequently opened the package and discovered three Roni kits. Quetel explained that "anytime [CBP officers] come across anything dealing with firearms [they] would open it to see if it actually is related to firearms" because they felt "that's part of what we do, protecting the borders." See *id.* at 17:2-5.

On November 14, 2018, Sharissa Smith ("Smith") and Bryan McCoy ("McCoy"), both officers with CBP, were inspecting domestic mail entering the U.S. Virgin Islands when they discovered a Priority Mail package addressed to Tyson and sent by France from Georgia. Recalling the search of the package containing Roni kits, Tyson and McCoy "Googled [Tyson] and saw that he was a convicted felon for trafficking firearms." See *id.*

at 31:11-12. McCoy then opened the package and found that it contained "gun parts." See *id.* at 31:18.

A search of the postal system uncovered four more Priority Mail packages currently en route to Tyson. Each package was sent by France from Georgia. The packages were all x-rayed by CBP officers and later opened. Each contained gun parts.

II. DISCUSSION

A. Validity of the November 14, 2018, Searches under the Fourth Amendment

The Fourth Amendment protects citizens from "unreasonable searches and seizures" of "their persons, houses, papers and effects." U.S. Const., amend. IV. The Fourth Amendment protects citizens from governmental intrusions into areas in which citizens have a "reasonable expectation of privacy." See, e.g., *Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018). "A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

In *United States v. Baxter*, No. CR 2017-24, 2018 WL 6173880 (D.V.I. Nov. 26, 2018), CBP officers were inspecting domestic mail arriving at the airport in St. Thomas when a drug sniffing dog alerted on a Priority Mail package. *Id.* at *1. Without obtaining a warrant, the dog's handler opened the package and discovered a handgun concealed in a sweater. CBP officers

claimed that the sweater smelled of marijuana. *Id.* at *1. A similar Priority Mail package was later identified, which was x-rayed and then opened without a warrant. *Id.* at *2. That package also contained a firearm. The United States alleged that Steven Baxter ("Baxter") sent the packages. Baxter was charged with two counts of illegally transporting a firearm. *Id.* This Court suppressed the evidence uncovered through the warrantless search of the package. *Id.* at *17.

The *Baxter* Court first explained that the protections of the Fourth Amendment applied to some mailed matter, including Priority Mail, which is designated as "sealed against inspection." *Id.* at *5 (quoting 39 C.F.R. § 111.1). The *Baxter* Court noted that federal law excluded the United States Virgin Islands from the United States customs zone and imposed duties on certain items being transported into the United States customs zone from the United States Virgin Islands, creating an approximation of a border. *Id.* at *14. Because of that exclusion, the Third Circuit held in *United States v. Hyde*, 37 F.3d 116 (3d Cir. 1994) that "'routine customs search of persons and their belongings without probable cause as they leave the Virgin Islands for the continental United States are not unreasonable under the Fourth Amendment.'" *Baxter*, 2018 WL 6173880 at *7 n.3 (quoting *Hyde*, 37 F.3d at 117).

Notwithstanding that holding with respect to travelers leaving the United States Virgin Islands by air, the Third Circuit has never extended that exception to the warrant requirement for items or persons traveling from the mainland to the United States Virgin Islands. After careful consideration, the *Baxter* Court declined to extend *Hyde* to items transported from the mainland to the United States Virgin Islands. *Id.* at *17. This Court held that “where. . . law enforcement conducts warrantless searches of sealed packages sent from the United States mainland to the United States Virgin Islands, law enforcement runs afoul of the Constitution.” *Id.*

Baxter recognized that the vitality of the Fourth Amendment protection afforded United States citizens on, or traveling between, United States sovereign soil, was neither schizophrenic in character nor locationally diminished. That is, a locus on United States soil could not cloak an individual there with the protection of the Fourth Amendment and at the same time denude the very same individual of some or all of the Fourth Amendment’s protection.

The Court sees nothing that materially distinguishes the warrantless searches of Priority Mail packages in *Baxter* from the warrantless searches of Priority Mail packages in this case. Indeed, the United States acknowledges as much. See ECF No. 46

at 7 n.3 ("The United States acknowledges that this Court has ruled in *United States v. Baxter*, 3:17CR00024, that the search by CBP of Virgin Islands' mail from the continental United States violates the Fourth Amendment, but the United States asserts this argument to preserve it for potential appellate review."). Accordingly, the Court holds that the November 14, 2018, package searches in this case violated the Fourth Amendment.

B. Good-Faith Exception

When evidence is obtained in violation of a defendant's Fourth Amendment rights, the exclusionary rule may prohibit the introduction of that evidence for the purposes of proving a defendant's guilt. See, e.g., *United States v. Dickerson*, 530 U.S. 428, 433 (2000). Significantly, however, the exclusionary rule "is not an individual right," *Herring v. United States*, 555 U.S. 135, 141 (2009), but rather "a judge-made remedy designed to deter illegal police conduct," *United States v. Mosley*, 454 F.3d 249, 269 (3d Cir. 2006). While this deterrence is important, "the heavy social costs of suppressing evidence counsel against [the] indiscriminate application" of the exclusionary rule. See *United States v. Wright*, 777 F.3d 635, 638 (3d Cir. 2015).

Balancing these competing concerns, the good-faith exception to the exclusionary rule provides that unconstitutional conduct will not result in suppression if "law enforcement officers 'acted with an objectively reasonable good-faith belief that their conduct was lawful.'" *United States v. Katzin*, 769 F.3d 163, 171 (3d Cir. 2014) (alterations omitted) (quoting *Davis v. United States*, 564 U.S. 229, 238 (2011)); see also *Virgin Islands v. John*, 654 F.3d 412, 417 (3d Cir. 2011) ("Where, for instance, a reasonable officer cannot have been expected to know that what he was doing was unconstitutional, he is unlikely to be discouraged in his actions by the knowledge that the fruits of unconstitutional searches will be suppressed."). If, however, law enforcement officers "'had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment,' suppression is warranted." *Katzin*, 769 F.3d at 182 (quoting *Illinois v. Krull*, 480 U.S. 340, 348-49 (1987)). In determining whether law enforcement's belief in the lawfulness of their conduct was objectively reasonable, a court must consider "'all of the circumstances' and confine [its] inquiry to the 'objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal' in

light of that constellation of circumstances.”¹ *Id.* (quoting *United States v. Leon*, 468 U.S. 897, 922 n. 23 (1984)).

Given that framework, some discussion of the jurisprudential developments surrounding warrantless searches of individuals and things travelling between the United States Virgin Islands and the United States mainland is in order.

In *United States v. Hyde*, 37 F.3d 116 (3d Cir. 1994), the defendants were subjected to warrantless searches in the St. Thomas airport as they were leaving the Virgin Islands for Florida. *Id.* at 117. The district court suppressed the discovered evidence. *Id.* at 118. On appeal, the Third Circuit reversed, “hold[ing] that routine customs search of persons and their belongings without probable cause as they leave the Virgin Islands for the continental United States are not unreasonable under the Fourth Amendment.” *Id.* at 117.

Prior to *Baxter*, this Court appeared to presume that travel of persons and things between the United States Virgin Islands

¹In *Davis v. United States*, 564 U.S. 229 (2011), the U.S. Supreme Court held that, under the good-faith exception, “searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.” *Id.* at 232. The Third Circuit has explained that this holding did not supplant “the general good faith analysis” discussed in the text above. See *Katzin*, 769 F.3d at 177. Indeed, “to exclude evidence simply because law enforcement fell short of relying on binding appellate precedent would impermissibly exceed the Supreme Court’s mandate that suppression should occur in only ‘unusual’ circumstances: when it ‘furthers the purposes of the exclusionary rule.’” *Id.* at 177-78 (alterations omitted) (quoting *Leon*, 468 U.S. at 918).

and the United States mainland in either direction and in any circumstance was, for Fourth Amendment purposes, identical to travel between foreign soil and United States sovereign territory. See *David v. Gov't of Virgin Islands*, No. CRIM.APP. 2003-129, 2009 WL 1872678 (D.V.I. June 25, 2009); *United States v. Mark*, No. CRIM 2006-80, 2007 WL 2669576 (D.V.I. Sept. 5, 2007); *United States v. Chabot*, 531 F. Supp. 1063, 1069 (D.V.I. 1982). With its ruling in *Baxter*, the Court has clearly rejected that presumption.

As discussed above, the *Baxter* Court held that the *Hyde* warrant exception did not extend to searches of Priority Mail packages mailed from the United States mainland to the United States Virgin Islands. See *Baxter*, 2018 WL 6173880 at *17. In *United States v. Barconey*, No. CR 2017-0011, 2019 WL 137579 (D.V.I. Jan. 8, 2019), this Court held that the *Hyde* warrant exception did not extend to searches of luggage and individuals arriving at a United States Virgin Islands airport after traveling from the mainland United States. *Id.* at *12.

Baxter was decided on November 26, 2018, while *Barconey* was decided on January 8, 2019. The searches at issue in this case were on November 14, 2018. To the extent that chronology of events could give rise to the application of the good-faith exception here, it is the Government that bears the burden of

showing that the good-faith exception applies. *See United States v. Ganas*, 824 F.3d 199, 236 (2d Cir. 2016). At the same time, application of the exception may be waived by a failure to raise it when opposing a motion to suppress. *See United States v. Lara*, 815 F.3d 605, 613 (9th Cir. 2016) (holding that government waived good-faith exception by failing to raise argument in district court).

In *Baxter*, the United States did not argue that the good-faith exception should apply. *See generally United States v. Baxter*, Crim. Case No. 17-24, *Gov't Br.*, ECF No. 83; *United States v. Baxter*, Crim. Case No. 17-24, *Suppression Hr'g Tr.*, ECF No. 99. Accordingly, after finding that the warrantless searches at issue in that case were unconstitutional, the Court suppressed the evidence uncovered by those searches. *See Baxter*, 2018 WL 6173880 at *17. On the other hand, in *Barconey* and *Thomas-Okeke*, the United States demonstrated that the agents acted based on their reasonable understanding of the state of the law pre-*Baxter*. *See United States v. Barconey*, Crim. Case No. 17-11, *Gov't Br.*, ECF No. 94 at 13; *United States v. Thomas-Okeke*, Crim. Case No. 17-8, *Gov't Br.*, ECF No. 58 at 1. Accordingly, the Court did not suppress the unconstitutionally recovered evidence in those cases. *See Barconey*, 2019 WL 137579, at *16; *Thomas-Okeke*, 2019 WL 2344772, at *6.

Here, the United States has demonstrated that the agents who undertook the searches in this case did so in good faith reliance on this Court's pre-*Baxter* decisions. In light of that, the Court finds that the agents here, in good faith, concluded that travel between the United States Virgin Islands and the United States mainland was, for Fourth Amendment purposes, equivalent to travel between a foreign state and the United States. Thus, the good-faith exception to the exclusionary rule applies.

The premises considered, it is hereby **ORDERED** that the motions to suppress docketed at ECF Number 38, ECF Number 40, ECF Number 50, and ECF Number 51 are **DENIED**.

S\ _____
CURTIS V. GÓMEZ
District Judge